

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN RAPP, et al.,

Plaintiffs,

v.

NAPHCARE, INC. an Alabama
Corporation, et al.,

Defendants.

CASE NO. 3:21-cv-05800-DGE

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS NAPHCARE AND
KITSAP COUNTY'S MOTIONS TO
DISMISS (DKT. NOS. 66, 64)

I INTRODUCTION

This matter comes before the Court on Defendant Kitsap County's Motion to Dismiss for Failure to State a Claim (Dkt. No. 64) and Defendants NaphCare and NaphCare's Out-of-State Leadership's Motion to Dismiss for Failure to State a Claim and Lack of Personal Jurisdiction. (Dkt. No. 66.) The Court considered the pleadings filed in support of and in opposition to the motions and the remainder of the record and hereby GRANTS in part and DENIES in part the Defendants' motions.

II BACKGROUND

This action arises out of the suicide of Nicholas Rapp while he was a pretrial detainee at Kitsap County Jail (“Jail”). (Dkt. No. 63 at 2.) Plaintiffs are John Rapp, Nicholas Rapp’s father, in his personal capacity and as personal representative for the estate of Nicholas Rapp, N.R., Nicholas Rapp’s minor child, and Judith Rapp, Nicholas Rapp’s biological mother. (*Id.* at 3–4.)

Defendants are Kitsap County, a municipal corporation responsible for administering the Jail and NaphCare, Inc. (“NaphCare”), the healthcare provider at the Jail at the time of Nicholas Rapp’s death. (*Id.* at 4–8.) There are also a number of individual Defendants discussed below who were either employed by Kitsap County or NaphCare at the time of Nicholas Rapp’s death.

Nicholas Rapp struggled with opioid and alcohol addiction for a decade prior to his arrest on December 31, 2019. (*Id.* at 14–15.) He attempted suicide multiple times between 2003 and 2013. (*Id.*) Nicholas Rapp had a daughter with his partner, Megan Wabnitz, who is also a nurse at the Jail and employee of NaphCare. (*Id.* at 15.)

On the night of December 31, 2019, Nicholas Rapp was intoxicated and called Megan Wabnitz and told her he was suicidal. (*Id.* at 15–16.) Megan drove to pick up Nicholas Rapp and brought him back to her house. (*Id.*) At some point, an argument broke out between the two and the police were called to the residence. (*Id.* at 16.) Kitsap County Sherriff’s Deputies Brandon Rohde and Andrew Hren arrested Nicholas Rapp. (*Id.*) The deputies noticed Nicholas Rapp was extremely intoxicated and that he nodded off several times during the arrest. (*Id.*) At the time of the arrest, Megan Wabnitz informed Deputies Rohde and Hren that she was worried because Nicholas Rapp had expressed suicidal ideations a few hours earlier and that he had recently attempted suicide by hanging. (*Id.*)

1 When Nicholas Rapp arrived at the Jail, Deputy Rhode filled out an “Arrest and Booking
2 Information” sheet where Deputy Rhode marked “No” to the questions “Does the arrestee show
3 any signs of suicidal behavior or attempts?” and “Is the arrestee intoxicated?” (*Id.* at 16–17.)
4 Officer Elvia Decker handled Nicholas Rapp’s booking at the Jail. (*Id.* at 16.)

5 NaphCare employee Nurse Odessa McCleary conducted Nicholas Rapp’s “Receiving
6 Screening.” (*Id.* at 18.) According to the form completed by Nurse McCleary, the arresting
7 officers made no mention whether Nicholas Rapp had any current or recent suicidal ideation or
8 whether he was under the influence of drugs or alcohol. (*Id.*)

9 Nicholas Rapp informed Nurse McCleary he was detoxing from alcohol, heroin,
10 methamphetamine, and MDMA. (*Id.*) In response, Nicholas Rapp underwent a Clinical Institute
11 Withdrawal Assessment for Alcohol (“CIWA-Ar”) and Clinical Opiate Withdrawal Score
12 (“COWS”) assessments. (*Id.* at 19.) As part of the first COWS Nurse McCleary conducted, she
13 marked “No” to the question of “Do you currently have thoughts of self-harm or suicide.” (*Id.*)
14 Nurse McCleary then “re-assigned Nick to Central A Pod, noting he needed ‘special care’ and to
15 be on a ‘detox watch’ until January 6, 2020.” (*Id.*)

16 On January 1, 2019 at 2:03 a.m., NaphCare nurse Bruce Karl conducted another COWS
17 on Nicholas Rapp, indicating Nicholas Rapp had no thoughts of self-harm or suicide. (*Id.* at 20.)

18 Megan arrived at work at 7:00 am and sent her NaphCare supervisor Erica Molina an
19 email explaining that she could not work on the side of the Jail where Nicholas Rapp was housed
20 because of the domestic violence incident from the previous night and that Nicholas Rapp
21 recently attempted suicide and was acutely suicidal. (*Id.* at 21.) Megan also informed Ripsy
22 Nagra, a NaphCare nurse, of Nicholas Rapp’s past suicide attempt and current suicidal ideations.
23 (*Id.*)
24

1 Nurse Nagra subsequently conducted a health check on Nicholas Rapp and indicated he
2 did not have thoughts of self-harm or suicide. (*Id.*) Nurse Nagra conducted three subsequent
3 health checks that day, all showing Nicholas Rapp did not have thoughts of self-harm or suicide.
4 (*Id.* at 21, 26.)

5 NaphCare employee Dr. Alanna Sandack was not at the jail during Nicholas Rapp’s stay
6 but ordered various medications and that he undergo a neurological assessment twice daily. (*Id.*
7 at 21.) Dr. Sandack never “once examine[d] Nick. Instead, she relied on LPNs to serve as
8 gatekeepers and []to make independent assessment and treatment decisions[.]” (*Id.*)

9 On January 2, 2020, NaphCare employee Nurse LaDusta Haven is alleged to have
10 falsified information on the COWS and CIWA-Ar assessment forms. (*Id.* at 23.) “Video
11 evidence shows that LPN LaDusta did not see or talk to Nick during the fourteen seconds his
12 door was open while she made entries at the portable nursing station[.]” (*Id.*)

13 That afternoon Officers Jerry Randall and John Peterson performed safety checks on
14 Nicholas Rapp. (*Id.* at 26–27.) Both are alleged to have walked by Nicholas Rapp’s cell without
15 looking in or doing a direct visual safety check at certain times before he was found unconscious.
16 (*Id.*)

17 At 1:42 p.m., Officer Merile Montgomery found Nicholas Rapp hanging from a mattress
18 cover in his cell. (*Id.* at 28.) Officer Montgomery called for back-up and was soon assisted by
19 Officers Bezotte, Smith, Lacombe, and Peterson. (*Id.*) The officers untied Nicholas Rapp from
20 the hanging mattress cover and attempted life-saving measures. (*Id.*) At 2:10 p.m., Nicholas
21 Rapp was taken to Tacoma General Hospital where he was taken off life support on January 6,
22 2020. (*Id.*)

1 Plaintiffs now sue Defendants Kitsap County, a number of named and unnamed Kitsap
 2 County employees, NaphCare, NaphCare's Out-of-State Leadership¹ executives, and certain
 3 NaphCare employees working at the Jail while Nicholas Rapp was detained.

4 The Court dismissed Plaintiffs' Amended Complaint with leave to amend. (Dkt. No. 62.)
 5 Plaintiffs have since filed their Second Amended Complaint ("SAC") which Kitsap County and
 6 NaphCare again moved to dismiss. (Dkt. Nos. 64, 66.) Plaintiffs allege violations of 42 U.S.C.
 7 § 1983 against all Defendants. (Dkt. No. 63 at 48–54.) Plaintiffs also bring claims of negligence
 8 and gross negligence against Kitsap County and NaphCare and claims of corporate negligence,
 9 negligent hiring, and medical negligence against NaphCare. (*Id.*)

10 **A. Legal Standards**

11 **1. 12(b)(6) Motion**

12 Federal Rule of Civil Procedure 12(b) motions to dismiss may be based on either the lack
 13 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
 14 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). Material
 15 allegations are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston*
 16 *v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983) (citations omitted). "While a complaint attacked
 17 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's
 18 obligation to provide the grounds of his entitlement to relief requires more than labels and
 19 conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl.*
 20 *Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007) (citations omitted).

21
 22
 23 ¹ NaphCare's Out-of-State Leadership Defendants are Defendants Jim McLane, Moore, Burgess,
 24 Simpler, Alvarez, Bradford McLane, Henderson, and Savage. Plaintiffs also identify these
 individuals as "NaphCare Policymaking Defendants." (Dkt. 63 at 9–12.)

1 2. Rule 8(a)

2 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain “a short plain
3 statement of the claim showing that the pleader is entitled to relief.” To comply with Federal
4 Rule of Civil Procedure 8(a)(2), a plaintiff “must plead a short and plain statement of the
5 elements of his or her claim, identifying the transaction or occurrence giving rise to the claim
6 and the elements of the prima facie case[.]” *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 840
7 (9th Cir. 2000). Although Federal Rule of Civil Procedure 8 “encourages brevity, the complaint
8 must say enough to give the defendant ‘fair notice of what the plaintiff’s claim is and the
9 grounds upon which it rests.’” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 319
10 (2007) (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005)).

11 3. 12(b)(2) Motion

12 When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the
13 plaintiff bears the initial burden of showing that jurisdiction is appropriate. *Schwarzenegger v.*
14 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A plaintiff cannot simply rest on the
15 bare allegations of its complaint, but is obligated to come forward with facts, by affidavit or
16 otherwise, supporting personal jurisdiction. *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d
17 784, 787 (9th Cir. 1977). When resolving such a motion on written materials, the court
18 need “only inquire into whether the plaintiff’s pleadings and affidavits make a prima facie
19 showing of personal jurisdiction.” *Schwarzenegger*, 374 F.3d at 800 (internal quotation and
20 citation omitted).

21 **B. 42 U.S.C. § 1983 Claims**

22 A pretrial detainee has a substantive due process right under the 14th Amendment to be
23 protected from harm during custody. *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1067 (9th
24

1 Cir. 2016). As relevant here, that right may be violated by a correctional facility’s failure to
 2 adequately address the detainee’s medical needs, including an imminent risk of suicide. *Horton*
 3 *by Horton v. City of Santa Maria*, 915 F.3d 592, 599 (9th Cir. 2019); *accord Est. of Vela v. Cty.*
 4 *of Monterey*, 2018 WL 4076317, at *3 (N.D. Cal. Aug. 27, 2018).

5 Kitsap County moves to dismiss Plaintiffs’ 42 U.S.C. § 1983 claims against the County
 6 and individual Defendants Rufener, Simpson, Gese, Decker, Rohde, and Hren. (Dkt. No. 64 at
 7 1–2.) NaphCare moves to dismiss Plaintiffs’ 42 U.S.C. § 1983 claims against individual
 8 Defendants Sandack, McCleary, Karl, and Haven. (Dkt. No. 66 at 2.)

9 1. Plaintiffs have adequately alleged a *Monell* claim against Kitsap County

10 To impose *Monell* liability on a municipality under § 1983, plaintiffs must prove: “(1)
 11 [plaintiff] had a constitutional right of which he was deprived; (2) the municipality had a policy;
 12 (3) the policy amounts to deliberate indifference to his constitutional right; and (4) the policy is
 13 the moving force behind the constitutional violation.” *Gordon v. Cnty. of Orange*, 6 F.4th 961,
 14 973 (9th Cir. 2021) (internal quotations and citations omitted).

15 There are three established scenarios in which a municipality may be liable for
 16 constitutional violations under § 1983. “First, a local government may be held liable ‘when
 17 implementation of its official policies or established customs inflicts the constitutional injury.’”
 18 *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2012) *overruled on other*
 19 *grounds by Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (quoting *Monell*, 436
 20 U.S. at 708).

21 Second, a plaintiff can prevail on a § 1983 claim against a municipality by identifying
 22 acts of omission, such as a pervasive failure to train its employees, “when such omissions
 23 amount to the local government’s own official policy.” *Id.* “A policy of inaction or omission
 24

1 may be based on failure to implement procedural safeguards to prevent constitutional
2 violations.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012) (internal citations
3 omitted).

4 Omission as the result of a failure to train is established when “the need for more or
5 different training is so obvious, and the inadequacy so likely to result in the violation of
6 constitutional rights, that the policymakers of the city can reasonably be said to have been
7 deliberately indifferent to the need.” *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989).
8 “Only where a failure to train reflects a ‘deliberate’ or ‘conscious’ choice by a municipality can a
9 city be liable for such a failure under § 1983.” *Id.* at 389. “A pattern of similar constitutional
10 violations by untrained employees is ‘ordinarily necessary’ to demonstrate deliberate
11 indifference for purposes of failure to train.” *Connick v. Thompson*, 563 U.S. 51, 62 (2011)
12 (internal citations omitted).

13 Finally, a municipality “may be held liable under § 1983 when ‘the individual who
14 committed the constitutional tort was an official with final policy-making authority’ or such an
15 official ‘ratified a subordinate’s unconstitutional decision or action and the basis for it.’”
16 *Clouthier*, 591 F.3d at 1250 (quoting *Gillette v. Delmore*, 979 F.2d 1342, 1346–47 (9th Cir.
17 1992)).

18 Kitsap County does not dispute that Nicholas Rapp had a constitutional right of which he
19 was deprived. Citing specific paragraphs within the SAC, Plaintiffs’ Response to Kitsap
20 County’s Motion to Dismiss identifies ten policies they allege caused Nicholas Rapp’s death.
21 (See Dkt. No. 70 at 17–19.) Taken as true, the SAC contains factual allegations that Kitsap
22 County employees followed a series of policies and customs that resulted in Nicholas Rapp’s
23 death. The Court finds Rules 8(a) and 12(b)(6) are satisfied as the SAC provides Defendant
24

Kitsap County “fair notice of what the . . . claim is and the grounds upon which it rests.”
Twombly, 550 U.S. at 555. Thus, Kitsap County’s Motion to Dismiss is DENIED as to
 Plaintiffs’ *Monell* claim.

2. Individual Defendants

Pretrial detainee medical claims are “evaluated under an objective deliberate indifference
 standard.” *Vasquez v. Cty. of Santa Clara*, 803 Fed. App’x 100, 102 (9th Cir. 2020) (quoting
Gordon v. Cty. of Orange, 888 F.3d 1118, 1124–1125 (9th Cir. 2018)). Specifically, “the
 elements of a pretrial detainee’s medical care claim against an individual defendant under the
 due process clause of the Fourteenth Amendment are: (i) the defendant made an intentional
 decision with respect to the conditions under which the plaintiff was confined; (ii) those
 conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not
 take reasonable available measures to abate that risk, even though a reasonable official in the
 circumstances would have appreciated the high degree of risk involved—making the
 consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the
 defendant caused the plaintiff’s injuries.” *Gordon*, 888 F.3d at 1125. As for the third element, a
 plaintiff must “prove more than negligence but less than subjective intent—something akin to
 reckless disregard.” *Id.*

i. Officer Elvia Decker

Plaintiffs allege Officer Decker booked Nicholas Rapp into the Jail on the night of his
 arrest despite signs of extreme intoxication without first having him evaluated at a local hospital
 to determine if he was medically able to be housed in the jail. (Dkt. No. 63 at 17.) Plaintiffs
 further allege Officer Decker should have transferred Nicholas Rapp to a community hospital
 due to his extreme intoxication. (*Id.* at 30.) The SAC also alleges that after processing Nicholas

1 Rapp, Nurse McCleary told Officer Decker she almost put Nicholas Rapp in a “suicide thing”
2 because he responded “no” to her questions. (*Id.* at 20.)

3 Taking all allegations as true and construed in the light most favorable to Plaintiffs,
4 Plaintiffs allege sufficient facts to infer that: (i) Officer Decker “made an intentional decision”
5 not to flag Nicholas Rapp as a risk; (ii) those conditions put Nicholas Rapp “at substantial risk of
6 suffering serious harm”; (iii) Officer Decker “did not take reasonable available measures to abate
7 that risk, even though a reasonable [officer] in the circumstances would have appreciated the
8 high degree of risk involved”; and (iv) by not taking such measures, Officer Decker caused
9 Nicholas Rapp’s injuries. *Gordon*, 888 F.3d at 1125.

10 Thus, Kitsap County’s Motion to Dismiss is DENIED as to Officer Decker.

11 *ii. Deputies Brandon Rohde and Andrew Hren*

12 Plaintiffs allege “Megan informed both Deputies Rohde and Hren that she was worried
13 because of Nick’s expressed suicidal ideations just hours earlier, and that he had recently
14 attempted suicide by hanging. Giv[en] her training and experience, she deemed Nick acutely
15 suicidal, and informed the arresting officers of this.” (Dkt. No. 63 at 16.) The SAC contains
16 allegations that Deputy Rohde incorrectly answered the Arrest and Booking Information sheet
17 about Nicholas Rapp exhibiting any signs of suicidal behavior (*id.* at 16–17), implying Deputies
18 Rohde and Hren failed to inform anyone at the Jail that Nicholas Rapp “expressed suicidal
19 ideations just hours earlier, and that he had recently attempted suicide by hanging.” (*Id.* at 16.)
20 Taken as true, this enough to state a § 1983 claim against Deputies Rohde and Hren. Thus,
21 Kitsap County’s Motion to Dismiss is DENIED as to Deputies Rohde and Hren.

1 iii. *Gary Simpson, Mark Rufener, and John Gese*

2 “Supervisory liability is imposed against a supervisory official in his individual capacity
3 for his own culpable action or inaction in the training, supervision, or control of his subordinates,
4 for his acquiescence in the constitutional deprivations of which the complaint is made, or for
5 conduct that showed a reckless or callous indifference to the rights of others.” *Corales v.*
6 *Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). Supervisory officials may be held liable if they
7 implement a policy so deficient that the policy “itself is a repudiation of constitutional rights”
8 and is “the moving force of a constitutional violation.” *See Hansen v. Black*, 885 F.2d 642, 646
9 (9th Cir. 1989).

10 The SAC alleges Simpson, Rufener, and Gese, based on claims related to a prior
11 deceased inmate, knew the County’s “employees and contractors [ignored] its written
12 [substance] withdrawal policies” and that despite this prior knowledge “chose not to . . . enforce
13 its written withdrawal policies.” (Dkt. No. 63 at 38.) The SAC further alleges that Simpson,
14 Rufener, and Gese “failed to implement training programs on the use of cloth-type mattress
15 covers in single occupant cells and identifying signs of suicide risk and suicide precautions.”

16 Viewed in the light most favorable to Plaintiffs, these allegations are sufficient to allege
17 supervisory liability against Simpson, Rufener, and Gese. Thus, Kitsap County’s Motion to
18 Dismiss is DENIED as to Simpson, Rufener, and Gese.

19 iv. *Dr. Alanna Sandack*

20 Plaintiffs assert Dr. Sandack was not at the Jail at any point during Nicholas Rapp’s
21 detention and never once examined Nicholas Rapp. (Dkt. No. 63 at 21.) Instead, Dr. Sandack
22 relied solely on nursing staff “to serve as gatekeepers and [] to make independent assessment and
23
24

1 treatment decisions[.]” (*Id.*) Despite no examination, Dr. Sandack ordered medications and
2 other treatment for Nicholas Rapp. (*Id.*)

3 Viewing these allegations in the light most favorable to Plaintiffs, these facts are
4 sufficient to state a claim against Dr. Sandack based on deliberate indifference. Therefore,
5 NaphCare’s Motion to Dismiss is DENIED as to Dr. Sandack.

6 *v. Nurse Odessa McCleary*

7 Plaintiffs allege Nurse McCleary conducted Nicholas Rapp’s receiving screening at the
8 Jail when Nicholas Rapp informed Nurse McCleary he was detoxing. (Dkt. No. 63 at 18.) She
9 then put in a plan to have him undergo COWS and CIWA-Ar assessments. (*Id.*) Plaintiffs allege
10 that after Nurse McCleary conducted Nicholas Rapp’s mental health screening she told Officer
11 Decker she almost “put him in a suicide thing ‘cause he was . . . answering the questions like, no,
12 no, no, kinda, you know, not listening.” (*Id.* at 20.)

13 Reading the SAC in the light most favorable to Plaintiffs, Nurse McCleary new Nicholas
14 Rapp’s conduct and responses during the mental health screenings raised possible suicide
15 concerns but failed to do more to properly assess his mental health. These allegations are
16 sufficient to survive a motion to dismiss. Thus, NaphCare’s Motion to Dismiss is DENIED as to
17 Nurse McCleary.

18 *vi. Nurse Bruce Karl*

19 Plaintiffs allege Nurse Karl conducted COWS and CIWA-Ar assessments on Nicholas
20 Rapp at 2:03 a.m. on January 1, 2020. (Dkt. No. 63 at 20.) Plaintiffs allege that “[t]he box to
21 indicate whether Nick currently had thoughts of self-harm or suicide was marked ‘No’ on both
22 assessments.” (*Id.*) Plaintiffs also allege Nurse Karl performed these assessments despite
23 knowing he was “was out of date on his Suicide Prevention in Jails training[.]” (*Id.*) Whether
24

Nurse Karl's assessment of Nicholas Rapp's suicidality while knowingly being out of date on his suicide prevention training amounts to deliberate indifference requires further factual development, but at this stage is enough to state a claim. Thus, NaphCare's Motion to Dismiss is DENIED as to Nurse Karl.

vii. Nurse Haven LaDusta

Plaintiffs allege Nurse LaDusta falsified a COWS and CIWA-Ar assessments for Nicholas Rapp at 2:22 a.m. on January 2, 2020. (*Id.* at 23.) Plaintiffs allege Nurse LaDusta "indicated on the COWS and CIWA-Ar paperwork that Nicholas Rapp did not currently have thoughts of self-harm or suicide" but that Nurse LaDusta "did not see or talk to Nick during the fourteen seconds his door was open while she made entries at the portable nursing station[.]" (*Id.*) Whether Nurse LaDusta allegedly falsifying an assessment and otherwise failing to review Nicholas Rapp's condition amounts to deliberate indifference requires further factual development, but at this stage these allegations are sufficient to state a claim. Therefore, NaphCare's Motion to Dismiss is DENIED as to Nurse LaDusta.

C. Negligence

1. Plaintiffs have adequately alleged negligence and gross negligence claims against Kitsap County

To prove negligence, a plaintiff must establish the existence of a duty owed, breach of that duty resulting injury, and proximate cause between breach and injury. *Tincani v. Inland Empire Zoological Soc.*, 875 P.2d 621, 624 (Wash. 1994). "Washington courts have long recognized a jailor's special relationship with inmates, particularly the duty to ensure health, welfare, and safety." *Gregoire v. City of Oak Harbor*, 244 P.3d 924, 928 (Wash. 2010) (citation omitted). A "jail's duty to protect inmates includes protection from self-inflicted harm[.]" *Id.* at

931. Gross negligence is “negligence substantially and appreciably greater than ordinary negligence.” *Nist v. Tudor*, 407 P.2d 798, 803 (Wash. 1965).

Kitsap County moves to dismiss Plaintiffs’ negligence claims arguing “Plaintiffs’ SAC fails to articulate the basis for any negligence claims and leaves defendants guessing as to the legal theory and factual basis for the same.” (Dkt. No. 64 at 9.) Kitsap County specifically argues Plaintiffs “fail[] to sufficiently identify what conduct by what defendant is meant to form the basis of a negligence or gross negligence claim” or “how any alleged breach may have proximately caused Rapp’s death.” (*Id.* at 10–11.)

Based on the alleged conduct of each individual Kitsap County employee already identified related to Plaintiffs’ § 1983 claims, the SAC sufficiently identifies the conduct of each defendant forming the basis of Plaintiffs’ negligence and gross negligence claims. Therefore, Kitsap County’s Motion to Dismiss is DENIED as to Plaintiffs’ negligence and gross negligence claims.

2. Plaintiffs adequately alleged negligence and gross negligence claims against NaphCare

NaphCare moves to dismiss Plaintiffs’ negligence and gross negligence claims arguing that “Plaintiffs have failed to state a claim against NaphCare for negligence and gross negligence that is separate and apart from medical negligence, corporate negligence, and negligent hiring[.]”² (Dkt. No. 66 at 23–24.) Specifically, Naphcare asserts “there are no allegations that Nick was injured by Naphcare for a non-healthcare related reason.” (*Id.* at 24.)

² NaphCare argues for the first time in its Reply that Plaintiffs had previously waived all negligence claims against it in their previous Response to NaphCare’s Motion to Dismiss the First Amended Complaint. (Dkt. No. 74 at 3) (citing Dkt. No. 36.) But as the argument is first raised in a Reply, the Court will not address the argument for now.

1 Plaintiffs do allege Naphcare’s employee, Nurse Karl, knowingly was “out of date on his
 2 Suicide Prevention in Jails training” when he completed the COWS and CIWA-Ar assessments.
 3 (Dkt. No. 63 at 20.) They also allege Naphcare’s employees, Nurse LaDusta and Nurse Nagra
 4 falsified information when completing the forms for the COWS and CIWA-AR assessments as
 5 they are alleged not to have interacted with Nicholas Rapp when completing the forms. (*Id.* at
 6 22–23, 25–26.)

7 These allegations viewed in the light most favorable to Plaintiffs would support
 8 negligence and gross negligence claims. These claims, arguably, are based on conduct unrelated
 9 to and independent of any medical treatment provided to Nicholas Rapp. Thus, NaphCare’s
 10 Motion to Dismiss is DENIED as to Plaintiffs’ negligence and gross negligence claims.

11 **D. The Court Lacks Personal Jurisdiction over the NaphCare Out-of-State** 12 **Leadership**

13 NaphCare moves to dismiss the SAC arguing the Court lacks personal jurisdiction over
 14 the NaphCare’s Out-of-State Leadership Defendants. (Dkt. No. 66 at 10–16.) The Court’s
 15 previous Order dismissing Plaintiffs’ First Amended Complaint (“FAC”) reserved judgment on
 16 the issue but noted that “[i]t does appear NaphCare has raised significant issues regarding the
 17 lack of purposeful direction and intentional acts by most of, if not all, NaphCare’s Out-of-State
 18 Leadership Defendants.” (Dkt. No. 62 at 18.)

19 “Federal courts apply state law to determine the bounds of their jurisdiction over a
 20 party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed. R. Civ.
 21 P. 4(k)(1)(A)). Washington’s long-arm statute, Washington Revised Code § 4.28.185, “extends
 22 jurisdiction to the limit of federal due process.” *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82
 23 (Wash. 1989). The due process clause grants the court jurisdiction over defendants who have
 24 “certain minimum contacts . . . such that the maintenance of the suit does not offend ‘traditional

1 notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316
2 (1945) (quotations omitted).

3 Personal jurisdiction can be based on either general jurisdiction or specific jurisdiction.
4 *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) *overruled in*
5 *part on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433
6 F.3d 1199, 1207 (9th Cir. 2006) (en banc). Plaintiffs do not allege NaphCare’s Out-of-State
7 Leadership are subject to general jurisdiction. Thus, only specific jurisdiction is at issue.

8 “The inquiry whether a forum State may assert specific jurisdiction over a nonresident
9 defendant ‘focuses on the relationship among the defendant, the forum, and the litigation.’”
10 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting
11 *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014)). Two principles guide this inquiry: first, this
12 relationship must arise from contacts that the “defendant *himself*” creates with the forum
13 state. *Walden*, 571 U.S. at 284 (emphasis in original). In other words, plaintiffs’ or third parties’
14 contacts with the forum state cannot be the basis for jurisdiction over the defendant. *Id.* This is
15 because due process in this context “principally protect[s] the liberty of the nonresident
16 defendant—not the convenience of plaintiffs or third parties.” *Id.* Second, the ““minimum
17 contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the
18 defendant’s contacts with persons who reside there.” *Id.* at 285.

19 The Ninth Circuit applies a three-part test to determine whether the exercise
20 of specific jurisdiction over a nonresident defendant is appropriate: (1) the defendant has either
21 purposefully directed his activities toward the forum or purposely availed himself of the
22 privileges of conducting activities in the forum; (2) the claims arise out of the defendant’s forum-
23
24

1 related activities; and (3) exercise of jurisdiction is reasonable. *Axiom*, 874 F.3d at 1068
2 (citations and quotations omitted).

3 For “purposeful direction,” courts apply the three-part test from *Calder v. Jones*, 465 U.S.
4 783 (1984), which asks whether the defendant (1) committed an intentional act, (2) expressly
5 aimed at the forum, (3) causing harm that it knows is likely to be suffered there. *Axiom*, 874
6 F.3d at 1069.

7 Plaintiffs concede that the Court lacks general jurisdiction over any of the NaphCare Out-
8 of-State Leadership Defendants. (Dkt. No. 73 at 12.) Instead, Plaintiffs argue the Court has
9 specific jurisdiction over each of the NaphCare Out-of-State Leadership Defendants because
10 they purposefully directed their activities toward the forum. (*Id.* at 12–16.) Plaintiffs argue the
11 NaphCare Out-of-State Leadership Defendants committed an intentional act by “formulating,
12 administering, and ratifying policies, procedures, practices, and customs within NaphCare that
13 are deliberately indifferent to the rights and safety of pretrial detainees, including Nick[,]” and
14 being “responsible for establishing and hav[ing] final approval on policies for NaphCare;
15 oversee[ing] the delivery of nursing care in all NaphCare-served facilities, including standards of
16 medical care and utilization review; and work[ing] with the key stakeholders across the Nation in
17 ensuring that NaphCare turns a profit, at patient expense.” (Dkt. No. 73 at 13) (citing Dkt. No.
18 63).

19 But in the face of a Rule 12(b)(2) motion “mere ‘bare bones’ assertions of minimum
20 contacts with the forum or legal conclusions unsupported by specific factual allegations will not
21 satisfy a plaintiff’s pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).
22 Plaintiffs contend that the NaphCare Out-of-State Leadership Defendants were responsible for
23 administering all policies without mentioning any NaphCare policy the Defendants specifically
24

1 administered or formulated. Nor have they explained how these policies or customs were the
2 result of the intentional act by each of the NaphCare Out-of-State Leadership Defendants.
3 Essentially, Plaintiffs argue the Court has jurisdiction over the NaphCare Out-of-State
4 Leadership Defendants because of their positions as executives of NaphCare. This does not
5 satisfy the intentional act requirement of the *Calder* effects test.

6 Plaintiffs' only specific factual allegation of purposeful direction is that NaphCare's
7 founder and owner Jim McLane personally solicited Kitsap County to contract for its medical
8 services at the Jail. (Dkt. No. 63 at 39.) Plaintiffs allege the solicitation included a description
9 of the NaphCare Out-of-State Leadership Defendants as "Key Personnel" involved in
10 NaphCare's leadership. (Dkt. No. 73 at 16.) But jurisdiction is created by the contacts the
11 "defendant *himself*" creates with the forum state. *Walden*, 571 U.S. at 284. Plaintiffs have
12 provided no factual support, beyond the specific jurisdictional allegations of Jim McLane, that
13 would lead the Court to find it has jurisdiction over the other NaphCare Out-of-State Leadership
14 Defendants.

15 NaphCare disputes Plaintiffs' allegation that Jim McLane participated in the negotiation
16 process that resulted in NaphCare being awarded the contract to provide health care at the Jail.
17 (Dkt. No. 66 at 9.) The only factual support offered by Plaintiffs that Jim McLane was involved
18 with solicitation of the Kitsap County is that Jim McLane signed a letter to Kitsap County on
19 behalf of NaphCare and the contract between NaphCare and Kitsap County on NaphCare's
20 behalf. (*See generally* Dkt. No. 37-1.)

21 As to Jim McLane, Plaintiffs have adequately alleged his personal solicitation was an
22 intentional act expressly aimed at the forum. But Plaintiffs have failed to explain how their
23 injuries arose out of Jim McLane's forum-related activities. The Ninth Circuit uses a 'but for'

test to determine whether a plaintiff's claims arise out of a defendant's forum-related conduct.
Menken v. Emm, 503 F.3d 1050, 1058 (9th Cir. 2007) (citation omitted).

The Court finds that Nicholas Rapp's death did not arise out of Jim McLane's role in soliciting the contract to provide health care services at the Jail. Indeed, Plaintiffs' response to NaphCare's motion fails to address the "arise out of" portion of the specific jurisdiction analysis. Plaintiffs' only citation in support of its position is not analogous. In *Failla v. FixtureOne Corp.*, the court found it had jurisdiction over an officer "directly responsible for the hiring, firing, promotion, and payment of [the plaintiff]'s wages" in a "wage dispute[] arising from those contacts." 336 P.3d 1112, 1118 (Wash. 2014). Jim McLane's signature on forms as part of the contract between Kitsap County and NaphCare is far too attenuated to be a but for cause of Nicholas Rapp's death.

Thus, the Court finds it lacks personal jurisdiction over the NaphCare Out-of-State Leadership Defendants and GRANTS NaphCare's Motion on these grounds.


III CONCLUSION

Accordingly, and having considered Defendants' motions, the briefing of the parties, and the remainder of the record, the Court finds and ORDERS that Defendants' Motions to Dismiss are GRANTED in part and DENIED in part as follows:

1. NaphCare's Motion to Dismiss (Dkt. No. 66) is GRANTED as to Defendants Jim McLane, Susanne Moore, Marsha Burgess, Amber Simpler, Jeffrey Alvarez, Bradford McLane, Cornelius Henderson, and Gina Savage for lack of personal jurisdiction and DENIED as to all other claims and parties.
2. Kitsap County's Motion to Dismiss (Dkt. No. 64) is DENIED.

Dated this 19th day of December 2022.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



David G. Estudillo
United States District Judge